

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

Case No. 07-00316-CR-W-HFS

GERRY K. BUCHENAU,)

Defendant.)

ORDER

Before the court is defendant's Motion for Reconsideration of the Order Denying his Motion for Compassionate Release under 18 U.S.C. § 3582. Defendant seeks reconsideration and complains about conditions in the prison, most notably, a lack of testing, inadequate usage of masks, and failure by inmates and staff to social distance. Defendant claims that as a result of these conditions he has recently tested positive for the virus (Reply Brief, Doc. 49), and, as previously argued in his request for compassionate release (Doc. 47), his weight puts him at greater risk for serious illness.

Notwithstanding a claimed positive test result for the virus, defendant does not claim to be suffering from a serious medical condition that has substantially diminished his ability to provide self-care in the facility in which he is confined; nor does he provide medical evidence in support of an alleged inability to self-care. Although defendant complains of less than optimal conditions at FCI Forrest City Low, today's BOP statistics reveal that out of 651 inmates testing positive for the virus, 607 have recovered and there

have been no reported inmate or staff deaths due to the virus.¹ United States v. Matthews, 2020 WL 5983908 *3 (W.D.Mo. J. Sachs)(FCI Forrest City Low has made strides in trying to control the pandemic at the facility which suggests that the facility can and will properly treat defendant if he contracts COVID-19).

After careful consideration of the record before me, defendant's motion for reconsideration (Doc. 47) is GRANTED, and upon reconsideration, the Order denying compassionate release (Doc. 45) is affirmed.²

s/ HOWARD F. SACHS

HOWARD F. SACHS

United States District Judge

December 15, 2020

Kansas City, Missouri

¹ www.bop.gov/coronavirus (Dec. 10, 2020).

² In light of this determination, the question of retroactivity under the First Step Act regarding the § 851 enhancement is not considered.